UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

RUSSELL KLIPPEL, on behalf
of himself and all others
similarly situated,

Plaintiff,

INDEX: 15-cv-1061
(MAD)(TWD)

v.

PORTFOLIO RECOVERY ASSOCIATES, LLC

and

CATHERINE M. HEDGEMAN, ESQ.,

Defendantss

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Settlement Agreement and Release of Claims ("Settlement Agreement") is entered into on this 20th day of September, 2016, by and between Plaintiff, individually and as representative of the proposed Settlement Class, and the Defendant, to settle and compromise, according to the terms and conditions herein, the above-captioned litigation presently pending in the United States District Court for the Northern District of New York.

I. DEFINITIONS

The following definitions apply to and are incorporated into this Settlement Agreement:

1. "Class Counsel" means the following attorneys:

Daniel A. Schlanger
Kakalec & Schlanger, LLP
85 Broad Street, 18th Floor
New York, NY 10004

Anthony J. Pietrafesa
Law Office of Anthony J. Pietrafesa
721 University Building
120 East Washington Street
Syracuse, NY 13202

2. “Counsel for Defendant” means Troutman Sanders, LLP.

3. The “Court,” unless otherwise indicated, means the United States District Court for the Northern District of New York.

4. “Defendant” means PRA.

5. “Defendants” means PRA and the Individual Defendant, Catherine M. Hedgeman, Esq.

6. “Effective Date of Settlement” means the date on which the appellate rights with respect to the Final Approval Order and Judgment in the Action have expired or been exhausted in such a manner as to affirm the Final Approval Order and Judgment.

7. “Final Approval Order and Judgment” means the order and final judgment entered by the Court that approves the class settlement with finality in all respects, and dismisses with prejudice the claims of the Class Plaintiff and the Settlement Class who do not opt out as provided in Federal Rule of Civil Procedure 23(b)(3), the current proposed form of which is attached as **Exhibit B**. The Parties reserve the right to amend the proposed form of **Exhibit B** before submitting it to the Court in connection with settlement approval proceedings or as may be required by the Court.

8. “Individual Defendant” or “Hedgeman” means Catherine M. Hedgeman, Esq.

9. “Litigation,” “Lawsuit” or “Action” means the case styled, *Russell Klippel, on behalf of himself and all others similarly situated v. Portfolio Recovery Associates, LLC and*

Catherine M. Hedgeman, Esq., in the United States District Court for the Northern District of New York, Index No. 15-cv-1061 (MAD) (TWD).

10. "Notice" means the form attached as **Exhibit C**, which will be mailed to potential Settlement Class members as described in subparagraph 40 below to advise them of this Settlement Agreement and their rights hereunder.

11. "Notice Plan" means the method of providing notice to the Settlement Class as approved by the Court in its Preliminary Approval Order.

12. "Parties" means the Class Plaintiff, individually and on behalf of the Settlement Class, and the Defendant as each of those terms is defined in this Settlement Agreement.

13. "Plaintiff" or "Class Plaintiff" means Russell Klippel.

14. "Preliminary Approval Motion" means a motion to be filed by Class Counsel requesting that the Court enter a Preliminary Approval Order granting preliminary approval of this Settlement Agreement and Notice Plan.

15. "PRA" means defendant Portfolio Recovery Associates LLC, a Delaware limited liability partnership authorized to do business in New York, with a principal place of business at Norfolk, Virginia.

16. "Preliminary Approval Order" means an order entered by the Court substantially in the form of the order attached as **Exhibit A**.

17. "Released Claims" means the following:

a. With regard to members of the Settlement Class: Claims for statutory damages under the Fair Debt Collection Practices Act ("FDCPA"), as well as release of all claims that were raised or could have been raised in the instant action based on a common nucleus of operative facts other than FDCPA actual damage claims, provided however that: (i) the release shall not include any defense to any of the underlying state court actions and/or judgments;

b. With regard to the Plaintiff: Claims included in the releases set forth above in Paragraph 17(a) and, in addition, release of any and all claims, demands, liabilities, damages or losses or expenses which they have suffered from the beginning of the world to date, including but not limited to any and all claims, demands, liabilities, damages, losses or expenses which have been or which could have been asserted by the Plaintiff in the above-captioned action. Defendant confirms in this regard that no account(s) for which the Plaintiff is the purported debtor, other than the accounts the attempted collection on which underlies the instant action, have been placed with or collected upon by Defendant.

18. "Released Parties" means all named Defendants (including both PRA and the Individual Defendant) in this action, together with their parents, subsidiaries, affiliates, divisions, associates, attorneys, employees, advisors, agents, predecessors, successors, assigns, executors, representatives, assignors, assignees, stockholders, officers, directors, shareholders, insurers, reinsurers and accountants.

19. "Settlement Administrator" means Heffler Claims Group.

20. "Settlement Class" means:

i. Natural persons;
ii. who were sued by PRA;
iii. in a state court consumer collection action;
iv. brought in the Northern District of New York;
v. in a city court in this District;
vi. in an action in which Hedgeman represented PRA;
vii. in which a summons misrepresented the state court's jurisdiction over the defendant by stating in the summons ,

in relevant part: "BASIS FOR VENUE: Defendant resides in jurisdiction of CITY OF__________ " [or any substantially similar statement];

viii. in which the address of the state court defendant's residence is listed in the summons and/or complaint, and is outside the jurisdiction of the relevant city court,

ix. and, in which the summons was filed within one year of the initiation of the instant class action.

a. With regard to determining, for purposes of subsection (viii) above, whether the residence "listed in the summons and/or complaint. . . is outside the jurisdiction of the relevant city court", the Parties agree that this means that the consumer is not "a resident of the city [in whose city court the collection action was filed] or of a town contiguous to such city, (i) within the same county, and (ii) contiguous to the city by land." *UCCA Sec. 213(a)(1).*

b. With regard to determining, for purposes of subsection (vi) above, whether PRA was "represented by Ms. Hedgeman", the Parties agree that this will include only those cases where the summons and/or the complaint bears Catherine Hedgeman's signature or its likeness.

c. The following people who otherwise meet the Settlement Class definition above are hereby excluded:

i. anyone who has filed for bankruptcy after the alleged violation took place;
ii. anyone who is deceased; and
iii. all persons who timely, validly and properly requested exclusion from the Settlement Class.

II. RECITALS

21. Defendants deny the material factual allegations and legal claims asserted in the Action by the Class Plaintiff, and do not believe the claims asserted in the Action are meritorious. The Class Plaintiff disagrees and stands by his claims and allegations.

22. This Settlement Agreement was entered into after extensive arm's length discussions and negotiations between counsel. These negotiations included a full-day mediation session attended by the court appointed mediator, all counsel, the Class Plaintiff and an authorized employee of PRA, and numerous follow-up negotiations.

23. Class Counsel and Counsel for Defendant agree that the terms of this Settlement Agreement provide a fair, adequate, and reasonable resolution of the Action.

24. The Parties will request that the Court approve a class settlement of the Action, consistent with the terms herein. If the Court approves the class settlement, the Parties will request entry of a Final Approval Order and Judgment that dismisses the claims of the Plaintiff and Class Members in the Action with prejudice as to all Defendants including PRA and the Individual Defendant.

25. Considering the pertinent facts and applicable law, and the substantial benefits that will inure to Class members, the Class Plaintiff and Class Counsel have concluded that it is in the best interests of the Class Plaintiff and the Class Members to enter into this Settlement Agreement to avoid the uncertainties and expense of litigation. The Class Plaintiffs and Class Counsel consider this Settlement Agreement to be fair, reasonable, adequate and in the best interests of the Class Members.

26. The Class Plaintiff and Defendants acknowledge they have been represented and advised by independent legal counsel throughout the negotiations leading to this Settlement Agreement. They have voluntarily executed this Settlement Agreement on the advice of counsel.

27. The Parties agree to cooperate fully, to execute without delay the formal Settlement Agreement and any and all documents reasonably necessary to effectuate the settlement terms, and to promptly take all reasonable actions that are necessary to obtain judicial approval of this Settlement Agreement and give this Settlement Agreement full force and effect.

28. In consideration of the promises and mutual covenants set forth in this Settlement Agreement and the foregoing Recitals, the Parties agree that, upon entry of a Final Approval

Order and Judgment, that this Action shall be settled and compromised under the terms and conditions contained herein.

III. SUBMISSION OF SETTLEMENT TO THE COURT

29. Class Counsel shall present this Settlement Agreement to the Court as soon as practicable through a Consent Preliminary Approval Motion that shall request entry of a Preliminary Approval Order that:

(a) preliminarily approves the settlement as fair, reasonable, adequate, and in the best interests of the Settlement Class;

(b) certifies, for settlement purposes only, the Settlement Class as defined in this Settlement Agreement, pending final approval of the Settlement Agreement;

(c) approves the Notice and the Notice Plan;

(d) sets a date by which Notice must be sent;

(e) approves the Class Plaintiff;

(f) approves a Settlement Administrator;

(g) approves Class Counsel;

(h) schedules a final approval hearing (the "Final Fairness Hearaing") after the Notice period has expired so that the Court can consider any objections to the settlement, approve the class settlement, and consider Class Counsel's applications for attorneys' fees and expenses and incentive awards; and

(i) dismisses without prejudice all claims as against the Individual Defendant, Hedgeman, only.

30. Class Counsel and Counsel for Defendants will request that the Court schedule the Final Fairness Hearing to obtain final approval of the Settlement Agreement as soon as reasonably possible and consistent with the approved Notice Plan.

31. After the Court provides its final approval of the Settlement Agreement, the Parties will request entry of a Final Approval Order and Judgment. Among other things, the Final Approval Order and Judgment presented to the Court shall:

(a) provide final Court approval of the terms of the Settlement Agreement as fair, adequate, and reasonable;

(b) provide for the orderly performance and enforcement of the terms and conditions of the Settlement Agreement;

(c) dismiss the Action with prejudice as against all Defendants;

(d) discharge the Released Parties from all further liability to Settlement Class members with respect to the Released Claims;

(e) provide a permanent bar, preventing each of the Settlement Class members and any of their predecessors, successors, representatives, parent companies, subsidiaries, affiliates, heirs, executors, administrators, attorneys, successors, and assignees, from instituting, filing, commencing, prosecuting, maintaining, continuing to prosecute—directly or indirectly, as an individual or collectively, representatively, derivatively, or on behalf of them, or in any other capacity of any kind whatsoever—any action in any state or federal court or in any other tribunal, forum, or proceeding of any kind that asserts any of the Released Claims against the Released Parties;

(f) confirm that the Settlement Class was certified for settlement purposes only;

(g) acknowledge and address properly filed objections to the class settlement;

(h) find that the form and manner of disseminating class Notice as set forth in this Settlement Agreement and ordered by the Court was accomplished as directed, constituted the best practicable notice under the circumstances, met or exceeded the requirements of due process, and constituted due and sufficient notice to all members of the Settlement Class; and

(i) find that the Class Plaintiffs and Class Counsel have fairly and adequately represented the interests of the Class Members at all times in the Action.

32. Class Counsel shall work with Counsel for Defendants to prepare all preliminary approval and final approval papers and Defendants shall not file responsive papers.

33. Defendants shall provide notice to state and federal officials of the proposed class settlement as required by the Class Action Fairness Act (28 U.S.C. § 1715) within 10 days after Class Counsel files the Settlement Agreement with a Preliminary Approval Motion.

34. If the Preliminary Approval Order or the Final Approval Order and Judgment is not obtained from the Court in the form contemplated by this Settlement Agreement, or the Final Order and Judgment is reversed or materially modified on appeal, this Settlement Agreement shall be null and void *ab initio* upon election of either of the Parties and have no further force and effect with respect to any of the Parties in the Action. Upon such circumstances, no party shall be prejudiced with regard to any claim or defense, including any claim or defense related to class certification, and the Settlement Administrator shall promptly return the settlement funds to Defendants.

IV. COMPILATION OF THE CLASS LIST

35. Defendants will, within 14 days of execution of this Settlement Agreement provide to Plaintiff a copy of every summons and complaint that meets the definition of Paragraph 20, subsections (i) through (v) and also meets the definition of subsection (ix), *i.e.* all consumer collection action summonses and complaints filed by Ms. Hedgeman on PRA's behalf in a city in the Northern District, against a natural person within one year of the filing of the instant class action lawsuit.

36. Plaintiffs will, within 21 days of receipt of these materials, compile a list of all of those cases in which venue was asserted on the basis of the residence and, on the face of the summons and/or complaint, Defendants listed an address for the state court defendant that was:

1. not in the city [in whose city court the collection action was filed] and
2. was not in a "town contiguous to such city, (i) within the same county, and (ii) contiguous to the city by land." UCCA Sec. 213(a)(1).

37. This class list will include, the name of the class member, the city court where the action was filed, the towns which are "contiguous to [that] city, within the same county and contiguous to the city by land", as well as the class member's address as alleged in the summons and/or complaint.

38. Defendant will have 14 days to review Plaintiff's proposed class list and raise any factual objections, *e.g.*, that a given purported class members' town is, in fact, contiguous with the relevant city court. Any class members not objected shall be deemed included.

39. The parties agree that Magistrate Judge Dancks will make a final determination, not appealable by the parties, with regard to any potential class members whose inclusion in the class is not mutually agreed upon by the parties.

V. NOTICE AND OPPORTUNITY FOR EXCLUSION

40. The Settlement Administrator will provide Notice to all Class Members as follows:

(a) The Settlement Administrator shall send the Notice to potential Class members (as determined by the process set forth in Section IV, above) postage paid. Specifically, the Settlement Administrator shall send the Notice attached as **Exhibit C**.

(b) The Settlement Administrator shall complete the mailing as soon as practicable after entry of the Preliminary Approval Order, but in no event later than 30 days following entry of the Preliminary Approval Order, without further order of Court. Any Notice returned undelivered by the U.S. Postal Service shall be evaluated by the Settlement Administrator using its normal database follow up procedures, and the Notice shall be re-mailed if a more current address can be identified.

(c) The content of the website will be mutually agreed upon by the Parties, and shall conform to the provisions of Paragraph ____, below. This website shall remain active and accessible for 150 days after the Effective Date of Settlement.

(d) Class Counsel will receive an electronic copy of the compiled Class list no later than twenty-one (21) days prior to the date by which mailing must be made.

(e) Any Class Member who wishes to be excluded from the Settlement Class and/or Settlement Subclass must submit a written request for exclusion by First-Class U.S. Mail, postage paid, to the United States Post Office Box established and maintained by the Settlement Administrator for the purposes of this Settlement Agreement. Any request for exclusion from the Class Settlement must be postmarked on or before the deadline set by the Court and specified in the Notice, which shall be no less than 60 days after the mailing of the Notice. Anyone submitting a request for exclusion must: (a) set forth his/her full name and current address; and (b) specifically state his/her desire to be excluded.

41. Anyone who falls within the Settlement Class definition and who does not submit a request for exclusion in complete accordance with the deadlines and other specifications set forth in the Notice shall become a Settlement Class member and shall be bound by all proceedings, orders, and judgments of the Court pertaining to the Settlement Class pursuant to this Settlement Agreement, absent a court order to the contrary obtained at his or her own expense.

42. Defendant shall pay all costs reasonably incurred by the Settlement Administrator to provide the services specified in this Settlement Agreement. Neither Class Counsel nor Class Members shall be responsible for any costs of the Settlement Administrator.

43. The Settlement Administrator shall, upon request, provide copies to Class Counsel and Counsel for Defendant of all requests for exclusion and all written communications relating to the Settlement Agreement the Settlement Administrator receives from Class Members or others that were not served on the Parties. To the extent Class Counsel or counsel for Defendant receive requests for exclusions that have not been transmitted to the Settlement Administrator, they shall transmit those communications to the Settlement Administrator, who shall provide other Parties with a copy of those communications.

VI. CLASS MEMBER BENEFITS & RELEASE FOLLOWING FINAL APPROVAL OF THE CLASS SETTLEMENT BY THE COURT

44. In consideration for the release of claims by the Class Plaintiffs and Settlement Class members, and the dismissal with prejudice of the Action, Defendant will pay the total amount of $250 to each member of the Settlement Class not including the Class Plaintiff.

45. Specifically, within 45 days of Preliminary Approval of this Settlement Agreement, PRA shall send to the Class Administrator (with a copy cc'ed to Class Counsel) a check for the following amount: $250 multiplied by the number of Settlement Class Members (not including the Class Plaintiff) as determined by the procedures set forth herein (the "Settlement Class Fund").

46. Within 10 days of the Effective Date of Settlement, the Class Administrator shall send a check for $250 to each Settlement Class Member (not including the Class Plaintiff).

47. Within 10 days of the Effective Date of Settlement, Defendant will pay $1,000 (not $250) as FDCPA damages to the Class Plaintiff, and, in addition will pay Class Plaintiff an additional amount of $2,500 as a service payment for his efforts on behalf of the class, by delivering a check for a total of $3,500.00 payable to "Kakalec & Schlanger, LLP as attorneys" to Class Counsel.

48. Funds remaining in the Settlement Class Fund on a date that is 120 days after the last date on which settlement claims payment checks may lawfully be cashed will be paid to one or more mutually acceptable providers of free legal services in the Northern District of New York and approved by the Court.

49. The Settlement Administrator will maintain a website that includes settlement documents and other agreed information for review by Class Members. The class settlement website's URL will be displayed prominently on the Notice.

50. Upon the Effective Date of Settlement, the Class Plaintiff and the Class Members will each forever release, discharge, waive, and covenant not to sue the Released Parties regarding any of the Released Claims. This release includes all such claims that the Class Plaintiffs and the Settlement Class Members do not know of or suspect to exist in their favor at the time of this release and that, if known by them, might have affected their settlement and release of the Released Parties, or might have affected their decision not to object to this agreement.

51. The Released Parties and their counsel release the Class Plaintiff and Class Counsel from any and all claims including, without limitation, demands, rights, liabilities, counterclaims and causes of action, of every nature and description that were asserted or could have been asserted in connection with this litigation or settlement of this litigation. This release, however, shall not include release of, or constitute a defense to counterclaims or defenses that may be asserted in any of the underlying state court actions or judgments against Class Plaintiffs.

VII. OBJECTION PROCEDURE

52. Any Class member who wishes to object to the Class Settlement must send a written objection ("Objection") to the Settlement Administrator by First-Class U.S. Mail, postage paid, to the United States Post Office Box established and maintained by the Settlement Administrator for the purposes of this class settlement. All objections must also be filed with the Court and served on Class Counsel and on Counsel for Defendants at the addresses specified below.

53. Any Objection must be postmarked on or before the deadline specified in the Notice, which shall be 60 days after mailing of the Notice.

54. Only Class Members may object to the Settlement Agreement.

55. A Class Member who submits a request for exclusion shall not be entitled to object to the class settlement, and if both an exclusion and Objection are submitted, the Objection shall be deemed to be invalid.

56. The Settlement Administrator shall be responsible for forwarding all Objections to Class Counsel and Counsel for Defendants.

57. Class Counsel or Counsel for Defendants shall serve and file any Objections no later than 14 days before the hearing on the Final Approval Order and Judgment ("Final Fairness Hearing").

58. In the Objection, an objecting Class member must: (i) set forth his/her full name, current address, and telephone number; (ii) set forth a statement of the position the objector wishes to assert, including the factual and legal grounds for the position; and (iii) provide copies of all documents that the objector wishes to submit in support of his/her position.

59. Any Class member who does not strictly comply with these objection procedures and those specified in the Notice shall not be permitted to object to the class settlement.

60. Class Counsel and/or Counsel for Defendants may file a response to any Objection.

61. Subject to approval of the Court, any objecting Class member may appear at the Final Fairness Hearing, in person or through counsel, to show cause why the proposed class settlement should not be approved as fair, adequate, and reasonable.

VIII. ATTORNEYS' FEES, COSTS & SERVICE PAYMENTS

62. Attorney's Fees: Within 10 days of the Effective Date of Settlement, and subject to the Court's approval, Defendant agrees to pay Class Counsels' reasonable attorneys' fees and costs in the amount of $36,000 (*thirty six thousand dollars*), exclusive of the costs and fees of class administration by delivering a check to Class Counsel, payable to "Kakalec & Schlanger,

LLP". Defendants agree that they shall not oppose any submission(s) made by Plaintiff in support of an award of fees and costs of $36,000 or less, and that all such submissions shall be deemed to be made on consent of all Parties.

63. Any fee awards and service payments payable hereunder and approved by the Court shall be in complete satisfaction of any and all claims for such attorneys' fees, service payments, and costs under state or federal law that the Class Plaintiff, the Class Members, or Class Counsel have or may have against Defendants and the Released Parties arising out of the Action or in connection with the negotiation and preparation of this Settlement Agreement.

64. The Parties shall not be responsible for attorneys' fees, costs, or expenses of any kind incurred by settlement Class Members who submit Objections to the Class Settlement or who exclude themselves from the Settlement Class.

IX. BINDING EFFECT

65. Upon the Effective Date of Settlement, this Settlement Agreement shall be binding upon and inure to the benefit of the Parties, the Released Parties, and their representatives, heirs, successors, and assignees.

66. This Settlement Agreement and its attachments shall constitute the entire agreement of the Parties. This Settlement Agreement supersedes and replaces all prior negotiations and proposed agreements, written or oral.

67. All of the attached exhibits are incorporated into this Settlement Agreement by reference.

X. EXECUTION AND MODIFICATION

68. This Settlement Agreement may be executed in counterparts by the Parties, and a facsimile or emailed scanned signature shall be deemed an original signature for purposes of this Settlement Agreement.

69. The Settlement Agreement shall not be subject to any change, modification, amendment, or addition, nor can any provisions be waived, without the express written consent of Class Counsel and counsel for Defendant.

70. In the event any one or more of the provisions contained in this Settlement Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision if Defendant and Class Counsel, on behalf of the Class Plaintiff and the Class Members, mutually elect to proceed as if such invalid, illegal, or unenforceable provision had never been included this Settlement Agreement.

XI. TERMINATION

71. This Settlement Agreement is contingent upon Court approval. If the Preliminary Approval Order or the Final Approval Order and Judgment is not obtained from the Court in the form contemplated by this Settlement Agreement and its proposed orders, or the Final Order and Judgment is reversed or modified on appeal, and either the Class Plaintiff or Defendants so elect, this Settlement Agreement shall be null and void and have no further force and effect with respect to any of the Parties in the Action.

72. The canceling and terminating Party may make such election only by furnishing written notice of an intent not to proceed with the terms and conditions of this Settlement Agreement to the other Party within 15 calendar days of the event forming the basis for the election to terminate. In the event of such an election, this Settlement Agreement and all negotiations, proceedings, documents, and related statements shall be without prejudice to the Parties, shall not be deemed an admission by any Party of any matter, and shall not be used for any purpose. All Parties to the Action shall stand in the same position as if this Settlement

Agreement had not been negotiated, made, or filed with the Court, and without prejudice to the Parties' rights to either request or oppose class certification.

XII. OTHER TERMS AND CONDITIONS

73. This Settlement Agreement, and all contractual rights and obligations provided for therein shall be construed under and governed by the laws of the State of New York, without giving effect to the State of New York's choice-of-law principles.

74. The Court shall retain jurisdiction over the interpretation and implementation of this Settlement Agreement, as well as any and all matters arising out of, or relating to, the interpretation or implementation of the Final Approval Order and Judgment.

75. The Parties and their counsel have negotiated and fully reviewed the terms of this Settlement Agreement. The rule that any uncertainty or ambiguity in this contract will be construed against the drafter shall not apply to the construction of this Settlement Agreement by a court of law or any other adjudicating body of this Settlement Agreement.

76. The Parties will jointly request to stay all proceedings in the Action until entry of the Final Approval Order and Judgment. The stay of proceedings shall not prevent the filing and service of any motions, affidavits, and other papers necessary to obtain approval of this Settlement Agreement.

77. Whenever, under the terms of this Settlement Agreement, a person is required to provide service or written notice to Class Counsel or Defendants, such service or notice shall be directed to the individuals and addresses specified below, unless those individuals or their successors give notice to the other Parties in writing:

As to Class Counsel:

Daniel A. Schlanger
Kakalec & Schlanger, LLP
85 Broad Street, 18th Floor

New York, NY 10004

As to Defendants:

David N. Anthony
Troutman Sanders LLP
1001 Haxall Point
Richmond, VA 23219

78. Unless otherwise indicated herein, where any Party's exercise of any right under this Settlement Agreement requires written notice, the Party shall serve such written notice by First-Class U.S. Mail, postage paid, or any method that is at least as reliable and timely as First-Class U.S. Mail.

XIII. NO ADMISSION OF LIABILITY

79. The Parties understand and acknowledge that this Settlement Agreement constitutes a compromise and settlement of disputed claims. No action taken by the Parties either previously or in connection with the negotiations or proceedings connected with this Settlement Agreement shall be deemed or construed to be an admission of the truth or falsity of any claims or defenses heretofore made or an acknowledgment or admission by any Party of any fault, liability or wrongdoing of any kind whatsoever.

80. Neither the Settlement Agreement, nor any act performed or document executed pursuant to or in furtherance of the Settlement Agreement is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any claim made by the Class Plaintiff, the Class Members, Class Counsel, or anyone else.

XIV. COLLATERAL ATTACK AND *RES JUDICATA*

81. To the extent permitted by law, this Settlement Agreement shall not be subject to collateral attack by any Class Member or any recipient of the Class Notice after the Judgment is entered. To the extent permitted by law, such prohibited collateral attacks shall include but are

not limited to claims that the procedures for claims administration were incorrect, or that the Class Members failed for any reason to receive timely notice of the procedure for submitting a Claim Form or disputing the calculation of his or her individual distribution.

82. To the extent permitted by law, the Settlement Agreement and/or Judgment may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of this Agreement. The Defendants may file this Settlement Agreement and/or the Judgment in any action that may be brought against it in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

XV. NON-EVIDENTIARY USE

83. Except as provided herein, neither this Settlement Agreement nor any of its terms shall be offered or used as evidence by any of the Parties, Class Members, or their respective counsel in the Lawsuit or in any other action or proceeding; provided, however, that nothing contained in this section shall prevent this Settlement Agreement from being used, offered, or received in evidence in any proceeding to enforce, construe, or finalize the settlement and this Agreement.

XVI. EXTENSIONS OF TIME

84. Unless otherwise ordered by the Court, the Parties may jointly agree to reasonable extensions of time to carry out any of the provisions of this Settlement Agreement.

Dated: 9/20/16

KAKALEC & SCHLANGER, LLP

By: */s/Daniel A. Schlanger*
Daniel A. Schlanger
For Plaintiffs

Dated: 9/20/16

LAW OFFICE OF ANTHONY J. PIETRAFESA, ESQ

By: */s/Anthony J. Pietrafesa*
Anthony J. Pietrafesa
For Plaintiffs

Dated: 9/20/16

TROUTMAN SANDERS, LLP

By: */s/David N. Anthony*
David N. Anthony
For Defendants